IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 7261 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KARMARKAT P.H. OCCU SERVICE & 14 - Applicant(s)
Versus
RAJAPURKAR NANDKUMAR DATATRAYA & 1 - Respondent(s)

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Appearance :

MR NILESH A PANDYA for Applicant(s) : 1 - 14.
NOTICE SERVED for Respondent(s) : 1,
MR SUBHASH V PATEL for Respondent(s) : 1,
PUBLIC PROSECUTOR for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 14/08/2007

ORAL JUDGMENT

By way of this application u/s 482 of Criminal Procedure Code, the petitioners, original accused have prayed to quash and set aside the criminal complaint

No.733/97 before the ld. JMFC, Vadodara.

2. At the outset, it is to be noted that this matter is adjourned time and again and all throughout, Shri Subhash V. Patel, learned advocate appearing on behalf of the respondent No.1 has remained absent and this being a matter of 1997, this Court has no other alternative but to proceed further with the present application ex parte.

3. A complaint has been filed in the Court of ld. JMFC, Vadodara being criminal case No.733/97 by the respondent No.1 herein against the petitioners, the President, Vice President, Directors and the employees of the Anyonya Sahkari Mandali Cooperative Bank Ltd., Vadodara for the offence punishable u/s 409 r/w 114 of the IPC alleging inter alia that the complainant is the shareholder in the said Bank and had obtained cash credit loan (limit upto Rs.35000/-) in his personal capacity and had pledged his NSCs of the face value of Rs.50000/-. It is alleged in the complaint that according to the contract and the Bank Rules, the said NSCs were to be returned to the pledger at the time of discharge of the loan which was completely discharged on 8-3-96. It is alleged in the complaint that the complainant approached the original accused No.1 and requested him to return his NSCs who directed the complainant to approach him on 23-3-96 and when again the complainant approached, he was informed that it has been decided that NSCs would not be returned as the loan subsequently obtained by Mandar Corporation in which the complainant was once upon a partner. It is further alleged that instead of returning the NSCs, the Bank filed Lavad suit in the Board of Nominees Court, Vadodara and the Bank had obtained ex parte order of injunction restraining the complainant from obtaining any

realization of the amount of NSCS on 31-5-96. It is alleged in the complaint that by not returning the NSCs and withdrawing the same is nothing but an offence u/s 409 r/w 114 of the IPC. Therefore, the aforesaid complaint has been filed. That in the said complaint, the ld. JMFC, 2nd Court, Vadodara registered the said complaint for the offence u/s 409 and 114 of the IPC and issued summons against all the petitioners herein. Being aggrieved by the same, the petitioners herein have approached this Hon'ble Court by way of this application u/s 482 of Criminal Procedure Code to quash the aforesaid complaint and the summons issued by the learned trial Court.

4. Shri NA Pandya, learned advocate appearing on behalf of the petitioners has submitted that the NSCs were withdrawn by the Bank pursuant to the ad interim order granted by the learned Board of Nominees Court, Vadodara dated 28-6-96 and therefore, it cannot be said that by encashing the NSCs, the petitioners have committed the offence u/s 409 of the IPC. It is also further submitted that even the ex parte ad interim order dated 31-5-96 came to be confirmed by the learned Board of Nominees Court, Vadodara subsequently and the same was continued till the final disposal of the suit. It is further submitted that even after the parties have settled the account and the respondent No.1 herein has also paid the entire amount payable and even the pursis is also submitted before the learned Board of Nominees Court, Vadodara. It is submitted that on bare reading of the complaint and the aforesaid facts and circumstances, no case is made out against the petitioners for the offence u/s 409 and 114 of the IPC. It is submitted that the civil dispute has been converted into criminal

proceedings and to continue with the aforesaid criminal case/complaint would be abuse of process of law and therefore it is requested to quash and set aside the aforesaid complaint pending in the Court of ld. JMFC, Vadodara.

5. Shri Mengdey, ld. APP has requested to pass appropriate order considering the averments and allegations in the complaint and the facts as stated hereinabove.

6. Heard the learned advocates appearing on behalf of the respective parties.

7. The case of the complainant is that the NSCs pledged by him while taking the loan has been encashed by the accused persons and thereby they have committed the offence u/s 409 and 114 of the IPC. It is required to be noted that the NSCs were encashed by the petitioners and the Bank pursuant to the ad interim order passed by the learned Board of Nominees Court, Vadodara in the suit filed by the Bank for recovery of the amount and subsequently the said ad interim relief was confirmed till the final disposal of the suit. Therefore, when the NSCs were encashed pursuant to the ad interim relief passed by the learned Board of Nominees Court, Vadodara and the said order was confirmed subsequently after hearing all the concerned parties, it cannot be said that the petitioners and the Bank have committed the offence as alleged u/s 409 r/w 114 of the IPC. It appears that the civil dispute has been converted into criminal proceedings with some mala fide intention and for some oblique reason. On bare reading of the complaint and considering the averments and allegations in the

complaint and its face value, no case is made out against the petitioners herein for the offence u/s 409 r/w 114 of the IPC. To continue with the criminal proceedings against the petitioners by way of aforesaid criminal case would be abuse of process of law. Under the circumstances, the impugned complaint and the summons issued by the learned trial Court requires to be quashed and set aside in exercise of powers u/s 482 of Criminal Procedure Code.

8. For the reasons stated above, the petition succeeds. The criminal case No.733/97 pending before the ld. JMFC, Vadodara and the summons issued by the learned trial Court against the petitioners in the said case are hereby quashed and set aside. Rule made absolute.

(M.R. Shah, J.)

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